

Attorney for Debtor and Plaintiff,
Abdi Tajbakhsh

In re) Case No. 19-30764
)
Abdi Tajbakhsh,)
)
Debtor.)
)
) **ADVERSARY PRO. NO. _____**
) **COMPLAINT FOR LOAN**
) **MODIFICATION ENFORCEMENT**
)
)
_____)
)
)
Abdi Tajbakhsh, Plaintiff,)
)
)
vs.)
)
)
PHH Mortgage Service,)
)
and SLS Specialized Loan Servicing,)
)
also known as Specialized Loan, LLC,)
)
)
Defendants.)

Complaint for Loan Modification Enforcement – 1

I.

SUMMARY OF FACTS AND PROCEDURE

1. For several years, the debtor/plaintiff Abdi Tajbakhsh (hereinafter referred to as "plaintiff") and his non-debtor spouse, Emily D'Aniello, have attempted repeatedly to have their home loan mortgage modified to conform to their cash flow.

2. Plaintiff and his spouse presently have substantial income sufficient to support a loan modification.

3. The first mortgage holder, which use to be serviced by an entity called Ocwen, and is now serviced by defendant PHH Mortgage Service, is threatening plaintiff with a foreclosure sale. The current date for the foreclosure sale is October 1, 2019 as confirmed by Exhibit A attached to this Complaint.

4. As the record demonstrates, plaintiff commenced this bankruptcy on July 22, 2019.

5. On that same date, July 22, 2019, plaintiff's counsel sent a letter by facsimile to PHH Mortgage Services ("PHH"), requesting that PHH or fax to counsel paperwork needed for a loan modification. A copy of that letter is attached to this Complaint as Exhibit B.

6. The next day, on July 23, 2019, PHH sent a letter to plaintiff and his spouse, indicating that they [i.e., plaintiff and his spouse) have a loan mitigation option, and that they should submit a loan mitigation package for this purpose. A copy of that letter is attached to this Complaint as Exhibit C.

7. On August 6, 2019 plaintiff's counsel sent a letter by U.S. mail and by facsimile to PHH requesting a loss mitigation package, also known as a loan modification package. A copy of that letter is attached to this Complaint as Exhibit D.

8. On August 15, 2019 PHH sent a letter to plaintiff and his spouse indicating that PHH had received correspondence regarding a loan modification and that a response would be made by PHH within thirty (30) days. That thirty day time deadline has now passed without any response from PHH. Further, PHH has not requested an additional

1 time to process plaintiff's loan modification request. A copy of that August 15 PHH
2 letter is attached to this Complaint as Exhibit E.

3 9. To date, PHH has not sent a loan modification package to the plaintiff, and has
4 not requested any loan modification information from plaintiff.

5 10. As indicated above, plaintiff and his spouse are now facing a foreclosure sale
6 date of October 1, 2019 as confirmed by Exhibit A attached to this Complaint.

7 8 **II.**

9 **LOAN MODIFICATION PROCEDURE**

10 11. The Federal Consumer Financial Protection Bureau (CFPB) has issued
11 regulations pertaining to real estate settlement procedures. Those regulations are
12 commonly called Regulation X and can be found beginning at 12 C.F.R. §1024, et seq.
13 As relevant to this Adversary Proceeding, §1024.41 (b)(1) requires a servicer such as
14 PHH to exercise reasonable diligence in obtaining documents and information needed to
15 complete a loss mitigation application. This regulation also provides detailed procedures
16 that the servicer such as PHH must follow in processing and responding to a loan
17 modification package submitted by a borrower. Further, these regulations puts
18 restrictions on the loan servicer from conducting a foreclosure sale when a loan
19 modification request has been made or a loan modification package is under review.

20 21 **III.**

22 **FIRST CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 12. Plaintiff realleges and incorporates herein by reference each of the allegations
25 set forth previously in this Complaint.

26 13. There appears to be a dispute between plaintiff and PHH concerning
27 plaintiff's attempt to obtain a loan modification. Therefore, plaintiff requests that this
28

1 court issue declaratory relief which would define the rights and obligations of each party
2 so that PHH properly reviews plaintiff's loan modification request.

3
4 **IV.**

5 **SECOND CAUSE OF ACTION**

6 **(Declaratory relief)**

7 14. Plaintiff realleges and incorporates herein by reference each of the allegations
8 set forth previously in this Complaint.

9 15. In view of the October 1, 2019 foreclosure sale date now set by PHH,
10 plaintiff requests that the court, as part of any declaratory relief it may grant, issue an
11 order delaying any foreclosure sale until such time as PHH has taken reasonable steps to
12 review plaintiff's loan modification package, including an order that PHH send plaintiff a
13 loan modification package to be filled out by plaintiff and submitted to PHH for review.

14
15 **V.**

16 **THIRD CAUSE OF ACTION**

17 **(SLS Loan Servicing)**

18 16. Plaintiff realleges and incorporates herein by reference each of the allegations
19 set forth previously in this Complaint.

20 17. With respect to defendant SLS Servicing ("SLS"), plaintiff presently does not
21 have a dispute with that entity. SLS not initiated any foreclosure procedures. SLS holds
22 the secured second mortgage loan for plaintiff's home. There presently is no equity
23 remaining in plaintiff's home to support SLS's second mortgage lien, and any unsecured
24 claim that SLS may hold was discharged in a previous bankruptcy filed by plaintiff.

25 18. In the event during the pendency of this adversary proceeding SLS attempts
26 to initiate on its own behalf foreclosure procedures, plaintiff requests that the court issue
27 the same kind of declaratory relief that the plaintiff is requesting with respect to PHH.

19. Conversely, if SLS stipulates that it will not conduct any foreclosure procedure during the pendency of this Chapter 7 case, plaintiff will dismiss SLS without prejudice from this adversary proceeding.

VI.

PENALTIES REQUESTED

20. Plaintiff realleges and incorporates herein by reference each of the allegations set forth previously in this Complaint.

21. If the court finds that PHH or SLS has violated any of the provisions of 12 CFR §1024, plaintiff requests that the court assess penalties against the defendants to the extent that such penalties are available under Regulation X provisions or under what is called the Frank-Dodd Act, 12 U.S. Code §5565.

VI.

PRAAYER

The plaintiff prays for appropriate relief for each of the causes of action set forth in this Complaint.

Dated: August 27, 2019



John G. Warner
Attorney for Plaintiff,
Abdi Tajbakhsh

EXHIBIT A

TS No.: 2018-03144-CA

August 16, 2019

VIA First Class Mail
VIA Certified Mail (return receipt requested)
Certified Number:
Reference Code:

Abdi Tajbakhsh
180 Montecito Road, San Rafael, CA 94901

Property Address
180 Montecito Road, San Rafael, CA 94901

Trustee's Sale No.: 2018-03144-CA
Re: Notice to Borrower of Postponement of Trustee's Sale Pursuant
to Civil Code § 2924(a)(5)

FORECLOSURE SALE HAS BEEN POSTPONED

Notice is hereby given by Western Progressive, LLC, that the Trustee's Sale set for 08/27/2019, at the hour of 09:30 AM, at OUTSIDE AT THE SOUTHWEST CORNER OF SAN RAFAEL CITY HALL, 1400 FIFTH AVENUE, SAN RAFAEL, CA 94901, County of Marin, State of California, has been postponed and rescheduled.

New Foreclosure Sale Date:

The sale is now scheduled to occur on 10/01/2019 at the hour of 09:30 AM, at OUTSIDE AT THE SOUTHWEST CORNER OF SAN RAFAEL CITY HALL, 1400 FIFTH AVENUE, SAN RAFAEL, CA 94901, County of Marin, State of California, for the property located at the address above, as more fully described on said Security Instrument.

The real property is secured by a Deed of Trust dated 04/28/2006, and recorded 05/03/2006, under Instrument No. 2006-0028016, Book ---, Page ---, records of Marin County, California, from Abdi Tajbakhsh and Emily S. D'Aniello husband and wife as community property, as Grantors, to First American title, as Trustee, to secure an obligation in favor of Loan Center of California, Inc. as lender Mortgage Electronic Registration Systems, Inc. as beneficiary, as Beneficiary ("Security Instrument").

Stay Informed About Sale Activity

YOU MAY NOT RECEIVE WRITTEN NOTICE OF POSTPONEMENT EACH TIME THE TRUSTEE'S SALE IS POSTPONED. To ensure you have current information about the sale, we encourage you to monitor all sale activity and attend the sale to protect your interest. The sale may proceed without further notification.



EXHIBIT B

LAW OFFICE OF
JOHN G. WARNER

Attorney at Law
John G. Warner
(State Bar No. 046123)

21 TAMAL VISTA BLVD., SUITE 196
CORTE MADERA, CA 94925

Telephone
(415) 924-2640

Administrative Assistants
Karen DeLise
Leslie Marcotte
Direct Line (415) 924-5988

email: warnerwest@aol.com

Facsimile
(415) 927-0608

July 22, 2019

Sent by Facsimile No. 856-917-8322

PHH Mortgage Services
P.O. Box 66002
Lawrenceville, NJ 08648

Re: Abdi Tajbakhsh
Loan No. 8010787367

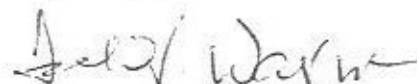
Dear PHH Mortgage Services:

Please be advised that the lender, Abdi Tajbakhsh, has filed for Chapter 7 bankruptcy relief. A copy of the Bankruptcy Petition including the case number is enclosed.

Mr. Tajbakhsh would like to negotiate a loan modification.

Please email to me or fax to me paperwork needed to for a loan modification.

Very truly yours,



John G. Warner

cc: Abdi Tajbakhsh

EXHIBIT C



MORTGAGE

PHH Mortgage Services
1 Mortgage Way
Mt. Laurel NJ 08054

Tel 877-744-2506
Fax 856-917-8300

July 23, 2019

RE:Abdi Tajbakhsh
Emily S D'Aniello
Loan Number: 8010787367
Case Number: 19-30764

JOHN G. WARNER
21 TAMAL VISTA BLVD #196
CORTE MADERA CA 94925

Dear JOHN G. WARNER :

We understand that your client may be experiencing a short or long term hardship that makes it difficult for them to make timely mortgage payments. Please note that The Department of Housing and Urban Development and other Government Sponsored Enterprises and programs have directed Lenders and Servicers to advise distressed borrowers of all possible Loss Mitigation options that may be available to help them solve the mortgage delinquency and allow them to retain ownership of the property. PHH Mortgage Services firmly believes in the goals and objectives of these directives. It is your client's decision whether or not he or she wishes to pursue Loss Mitigation. Should your client choose to pursue a Loss Mitigation

Should your client choose to pursue a Loss Mitigation option, please work with your client to request a Loss Mitigation package from either PHH Mortgage Services directly or assigned PHH Mortgage Services bankruptcy counsel so we can review your client's situation for mortgage assistance.

- Homeowner Assistance Financial Worksheet
- A letter of statement explaining the reason for hardship.
- Proof of income for the past 45 days
 - Proof of income may include pay stubs, profit and loss statements, or recent bank statements confirming deposit of income from employer or other income source. (Example: SSI, Disability income, Allotment)

Please allow us 7 to 10 business days from receipt of the financial information to review your client's request for Loss Mitigation assistance.

Please be advised that this letter is an expression of willingness to consider whether your client may qualify for possible Loss Mitigation options and is not intended and should not be considered to be a binding commitment or a contractual undertaking by the creditor. Further, no agreement shall be binding on either party unless and until the parties determine and agree on the final terms of a Loss Mitigation solution and, to the extent required, the approval of the Bankruptcy Court to enter into any such agreement.

EXHIBIT D

LAW OFFICE OF
JOHN G. WARNER

Attorney at Law
John G. Warner
(State Bar No. 046123)

21 TAMAL VISTA BLVD., SUITE 196
CORTE MADERA, CA 94925

Telephone
(415) 924-2640

Administrative Assistants
Karen DeLise
Leslie Marcotte
Direct Line (415) 924-5988

email: warnerwest@aol.com

Facsimile
(415) 927-0608

August 6, 2019

Sent by U. S. Mail and Facsimile No.: 856-917-8322

PHH Mortgage Services
P.O. Box 66002
Lawrenceville, NJ 08648

Re: Abdi Tajbakhsh
Emily S D'Aniello
Loan No. 8010787367
Case Number: 19-30764

Dear Sir or Madam:

With reference to your letter dated July 23, 2019, a copy of which is enclosed for reference, please send us a Loss Mitigation Package.

Very truly yours,



John G. Warner

cc: Abdi Tajbakhsh

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
				Digital Fax		
Aug 6	3:04PM	Fax Sent	18569178322	1:55 N/A	2	OK

EXHIBIT E



MORTGAGE

PHH Mortgage Services
1 Mortgage Way
Mt. Laurel NJ 08054

Tel 877-744-2506
Fax 856-917-8300

August 15, 2019

Abdi Tajbakhsh
Emily S D'Aniello
180 Montecito Rd
San Rafael CA 94901

Loan Number: 8010787367
Property Address:
180 Montecito Rd
San Rafael CA 94901



ACKNOWLEDGEMENT OF CORRESPONDENCE

Dear Customer(s):

As your Case Manager I, ANISH A remain committed to working with you. Please contact me with any questions that you have regarding your account or the information contained within this letter. My direct contact number is 877-744-2506, extension 80104. If you cannot reach me and do not wish to leave a message, you may press 0 and another Case Manager will assist you.

PLEASE NOTE THE FOLLOWING IMPORTANT COMMUNICATION REGARDING YOUR ACCOUNT.

We acknowledge receipt of the correspondence concerning the mortgage loan account referenced above. We will review the correspondence, perform any required research, and then provide a written response within 30 business days, or sooner where applicable, of receipt of the correspondence.

Please note that we may need to extend the time period for responding by an additional 15 business days, as allowed. If we do, we will notify you before the end of the 30 business day period of the need for an extension, as well as the reason for the extension.

As always, we value your business and would appreciate your attention to this matter.

Sincerely,

ANISH A
Case Manager

If you have any questions, please contact our office at the number provided above between the hours of 8:00am - 8:00pm EST Monday through Friday.

Esta carta contiene informacion importante sobre su cuenta y podria requerir su atencion. Si tiene alguna pregunta y desea hablar en espanol con un empleado, sirvase comunicarse con nosotros al 877-744-2506 durante nuestras horas de oficina normales. Nosotros tenemos representantes cuales hablan en Espanol. Estos representantes estan disponibles las horas de la Lunes a Viernes 8:00am a 8:00pm EST.

4-814-BAK19-0001948-001-02-000-000-000-000

MORTGAGE

PHH Mortgage Services
1 Mortgage Way
Mt. Laurel NJ 08054

Tel 877-744-2506
Fax 856-917-8300

Important Messages

This is an attempt to collect a debt. Any information obtained will be used for that purpose.

For Borrowers in Active Bankruptcy or Who Have Received Discharge: To the extent your original obligation has been discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and/or is notice of the creditor's intent to enforce a lien against the property and does not constitute a demand for payment or an attempt to impose personal liability for such obligation.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

HUD Counseling

For additional assistance, the United States Department of Housing and Urban Development ("HUD"), which is a government agency, sponsors housing counseling agencies throughout the country that can provide you advice on foreclosure alternatives, budgetary issues, and even assistance with understanding this notice. There is no fee for this service. If you would like assistance, you can contact a HUD-approved housing counselor by calling 1-800-569-4287 or you can reach the HOPE Hotline number at 1-888-995-HOPE. You may also visit the HUD website at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

HUD Consejeria

Para obtener ayuda adicional, el Departamento de Vivienda y Desarrollo Urbano ("HUD") de Estados Unidos, que es una agencia del gobierno, patrocina agencias de asesoria de vivienda en todo el pais que le puede proporcionar asesoramiento sobre las alternativas de ejecucion hipotecaria, las cuestiones presupuestarias, e incluso la asistencia con la comprension de este aviso. No hay que pagar por este servicio. Si desea ayuda, puede ponerse en contacto con un asesor de vivienda aprobado por HUD llamando al 1-800-569-4287 o puede llegar a la Linea Directa de HOPE al 1-888-995-HOPE. Tambien puede visitar el sitio web de HUD en <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

Requests for Information and Notices of Error, including Qualified Written Requests

If you wish to request information or assert an error relating to the servicing of your mortgage loan, including any Qualified Written Requests, you must use the address below and include your name, your mortgage loan account number, property address and a statement of either the information you are requesting or the error you believe has occurred:

PHH Mortgage Services
Post Office Box 66002
Lawrenceville, NJ 08648

Attention Servicemembers and Dependents

Servicemember on "active duty" or "active service", or a spouse or dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief



MORTGAGE

PHH Mortgage Services
1 Mortgage Way
Mt. Laurel NJ 08054

Tel 877-744-2506
Fax 856-917-8300

Act (50 USC App. 501-597b) (SCRA). If you are entitled to or have questions as to whether you are entitled to legal protections under the SCRA, please go to www.militaryonesource.com/scra or call 1-800-342-9647 to find out more information. You can also contact us at 877-744-2506, extension 80104 if you have any questions about your rights under SCRA.



4-814-BAK19-0001948-001-05-000-000-000-000